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March 11, 1998

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Via Hand Delivery

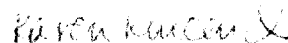
Re: Ex Parte Presentation, CC Docket No. 94-54 and DA 97-1155

Dear Ms. Salas:

In accordance with Section 1.1206(a)(1) of the Commission's Rules, 47 C.F.R. § 1.1206(a)(1), notice is hereby given of a written *ex parte* presentation given to Chairman Kennard, Commissioners Ness, Furchtgott-Roth, Powell, and Tristani, and several members of the Commission staff today on behalf of the Personal Communications Industry Association ("PCIA"). Four copies of the written materials are being provided for inclusion in the docket files referenced above. All members of the Commission staff given a copy of the materials are listed therein.

Should you have any questions or need any additional information, please feel free to call me at the number listed above.

Respectfully submitted,



Karen A. Kincaid
Wiley, Rein & Fielding
Counsel for the Personal Communications
Industry Association

Enclosures





March 11, 1998

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington D.C. 20554

Via Hand Delivery

Re: *Ex Parte* Presentation, CC Docket No. 94-54 and DA 97-1155

Dear Chairman Kennard:

The Personal Communications Industry Association ("PCIA") hereby responds to the February 10, 1998, *ex parte* letter submitted by the Telecommunications Resellers Association ("TRA") purporting to demonstrate the existence of a "resale blockade" preventing members of the wireless resale industry from being able to resell the services of broadband PCS and SMR providers. As outlined below, TRA's survey contains misleading questions that, when properly examined, are easily exposed for what they are – irrelevant inquiries that in no way demonstrate that *any* entity seeking to resell broadband PCS or SMR services has been precluded from doing so.

Briefly by way of background, on February 10, 1998, TRA filed an *ex parte* letter attached to a copy of its *1997 Year End Survey of Wireless Resellers*. In the letter, TRA argues that the survey results show that "nearly 90% of respondents who have sought to resell PCS have been denied the opportunity to do so." TRA further alleges that the "percentage climbs to a remarkable 100 percent – a complete shutout – for respondents who would like to resell SMR services." On the basis of the survey, TRA refers to the existence of a "resale blockade" in PCS and SMR services, and urges the FCC to (1) do away with the current provision sunseting the CMRS resale rule; and (2) deny PCIA's pending request that the Commission forbear from enforcing the CMRS resale rule as applied to broadband PCS carriers.

At the start, it should be observed that TRA's survey instrument consists of such biased and leading questions that no valid conclusions can be drawn from its results. For example, contrary to TRA's claims, the responses to the survey do not demonstrate that carriers seeking to resell PCS service have been denied an opportunity to do so. The survey asks respondents that are not reselling PCS services to check the appropriate box describing why. According to the summary of results compiled by TRA, in response to this inquiry, 79.4 percent of the respondents checked the box stating, "PCS carrier said it did not offer a resale agreement." Not offering a resale agreement is a wholly different matter from refusing a request for resale. There

are a range of legitimate reasons why a PCS carrier may not have an agreement specifically tailored to resale available, including that the PCS system may not be up and running or that the PCS operator offered its existing comparable business-to-business rate as opposed to a standard resale agreement. As the Commission's own policies make clear, carriers are not required "to structure their offerings in any particular way, such as to promote resale, or adopt wholesale/retail business structures, or to establish a margin for resellers, or guarantee resellers a profit."¹ Accordingly, carriers are under no obligation to have a *resale agreement* on hand, and the failure to have one in no way evidences the refusal of a request for resale.

The results of TRA's survey are also internally inconsistent. TRA's summary indicates on page 2 that 26.3 percent of the respondents, all of whom are resellers, offer PCS service. On page 3, the summary states that 10.5 percent of the respondents are reselling PCS. TRA offers no explanation for this discrepancy. In any event, however, neither of these figures supports TRA's statement that "nearly 90% of the respondents who have sought to resell PCS have been denied the opportunity to do so." In fact, page 3 of the summary indicates that 11.8 percent of the respondents checked the box indicating that they do not resell PCS services because they are "not interested in reselling PCS at this time." At another point, TRA's summary indicates that only 2.9 percent of the survey respondents indicated that they/it are not reselling PCS service because the PCS carrier either ignored requests for a resale agreement, offers unreasonable rates, or claims that its system is unready. Again, this figure is inconsistent with TRA's statement that "nearly 90% of the respondents who have sought to resell PCS have been denied the opportunity to do so."

In point of fact, in stark contrast to TRA's characterization of the PCS resale environment, PCIA's broadband PCS membership reports that a variety of successful approaches to PCS resale are currently being implemented. In this connection, a recent canvassing of PCIA's members reflects that PCS resellers are functioning effectively in the wireless marketplace and are offering a wide range of products and services. Some carriers are aggressively pursuing resale partners by offering terms and conditions specifically designed for resellers. Others are offering resellers the same prices, terms, and conditions available to similarly situated customers, in full compliance with the FCC's rules.

TRA's contention that its survey reveals a "complete shutout" for respondents that would like to resell SMR services is plagued by similar methodology flaws and *non sequiturs*. In the SMR portion of the survey, TRA asked reseller respondents that are not reselling SMR services to check the appropriate box explaining why. TRA's summary indicates that 47.4 percent of the

¹ *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 18455, 18462 (1996), *recon. pending*.

respondents checked the box indicating that the facilities-based SMR operator “said it did not offer a resale agreement.” Oddly enough, the summary also shows that 47.4 percent of the respondents checked a box indicating that they “are not interested in reselling SMR services at present.” Elsewhere in the summary, TRA reports that 100 percent of the respondents indicated that they are not currently reselling SMR services. At another point, the survey indicates that 18.4 percent of the respondents offer SMR service. Although it is difficult to draw any conclusions from figures this inconsistent, one thing is clear: there is no evidence in the survey responses supporting TRA’s assertion that entities requesting SMR resale were prevented from reselling SMR services. Quite to the contrary, TRA’s summary indicates that at least 47.4 percent of the surveyed entities are not interested in reselling SMR services.² Moreover, as TRA’s own survey makes plain, the more likely explanation is that there is little or no interest in reselling SMR services and little or no market for SMR resale activities. Finally, it is significant that TRA’s survey fails to indicate whether the SMR operators that supposedly did not have a resale agreement or would not provide billing tape are “covered” SMRs and, therefore, are even subject to the CMRS resale rule.³

² In an article dated February 16, 1998, *Wireless Week* reported that 38 companies responded to TRA’s survey. *See TRA Claims Opportunities Limited*, *Wireless Week* (Feb. 16, 1998). Of these 38 companies, 53 percent, or 20.14 companies, are reportedly interested in providing resale. Of these 20 companies, the 47.4 percent that checked the box indicating that they are not reselling SMR services because “the SMR carrier said it did not offer a resale agreement” equates to nine (9.4658) companies. The figure indicating that 18.4 percent of the reseller respondents offer SMR service equates to 6.992 companies. As such, virtually the same number of companies are offering SMR resale as those supposedly “shut out” by the fact that the SMR licensee did not have a resale agreement. In assessing these results, it is critical to stress that TRA’s survey does not indicate whether the SMR operators that did not have a resale agreement were in fact “covered” SMR providers and that, in any event, the Commission’s rules do not require licensees to have a resale agreement on hand.

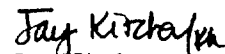
³ *See Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd at 18466 (concluding that cellular, broadband PCS, and “covered” SMR providers are subject to the CMRS resale rule, and defining “covered” SMR providers to include two classes of SMR operators: (1) 800 MHz and 900 MHz SMR licensees that hold geographic area licenses, and (2) incumbent wide area SMR licensees that have obtained extended implementation authorizations in the 800 MHz or the 900 MHz SMR service, either by waiver or under the FCC’s rules, and providing that, within these classes, “covered” SMR providers includes only those SMR licensees that offer real-time, two-way switched voice service interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services).

Simply put, TRA's survey is misleading, unreliable, and does not support the characterizations put forth in TRA's *ex parte* letter. PCIA submits that a better and more reliable way of gauging the existence of difficulties on the part of entities seeking to resell PCS or SMR services is by checking the Commission's compliance files. PCIA's examination of the case log maintained by the Wireless Telecommunications Bureau's Enforcement Division indicates that no formal complaints and only four informal complaints involving resale issues have been filed against PCS carriers.⁴ No resale-related complaints, formal or informal, have been filed against SMR operators.

In short, the results of TRA's survey do not demonstrate any basis for reversal of the Commission's decision to sunset the CMRS resale rule or for denying PCIA's request that the Commission forbear from enforcing the resale rule as applied to broadband PCS operators. Accordingly, PCIA urges the Commission to give no weight to TRA's *ex parte* submission and to grant PCIA's forbearance request in a prompt fashion.

Please feel free to call me at any time if you need further information with regard to this matter.

Sincerely yours,


Jay Kitchen
President, PCIA

cc: The Honorable Susan P. Ness
The Honorable Michael Powell
The Honorable Harold Furchtgott-Roth
The Honorable Gloria Tristani
Daniel Phythyon
Rosalind K. Allen
Steve Weingarten
Diane Conley
John Cimko
Nancy Boocker
Jane Phillips
Office of the Secretary/Docket File (4 copies)

⁴ Significantly, as of the date of this letter, at least one of these complaints has been resolved and another has been dismissed on the basis of an FCC determination that the PCS carrier in question acted in full accordance with the Commission's rules and policies.